UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,204	01/20/2006	Detlef Cieslik	2002P01357WOUS	5186

46726 7590 03/31/2011

BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER	
CIRIC, LJILJANA V	
ART UNIT	**PAPER NUMBER**
3785	

NOTIFICATION DATE	DELIVERY MODE
03/31/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/534,204
Filing Date: January 20, 2006
Appellant(s): CIESLIK ET AL.

Andre Pallapies, Registration No. 62,246
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on February 2, 2011 appealing from the Office action mailed October 5, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: claims 16 through 19, 21, 23, 27 through 31, 33 through 35, 37, and 38 stand rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claim 20 as being indefinite under 35 U.S.C. 112, second paragraph, as cited in the previous Office action.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief, other than that the status of claim 36 is "objected to" and not "rejected".

(8) Evidence Relied Upon

6,089,146 A	Nam et al.	07-2000

(9) Grounds of Rejection

The following two grounds of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16 through 19, 21, 27 through 31, 34, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Nam et el.

Nam et al. discloses a heat exchanger for a refrigeration device including a sleeve essentially as claimed, including, for example: a base plate 14; a tubular pipe 20 or 20'; a metallic sensor housing or sleeve 32 or 42 or 52 or 62 (see any one of Figures 2A, 2B, 2C or 3) arranged on the base plate 14 for receiving a temperature sensor 26; a metallic brace or fixing bracket 30 or 40 or 50 or 60 connected to the sleeve 32 or 42 or 52 or 62 and engaging on the tubular coolant pipe 20 or 20' via clamping section 34 or 34b or 44a or 44b or 64a or 64b; the tubular pipe 20 or 20' being connected to the base plate 14 via an adhesive layer (see column 6, lines 15-20); and, the tubular pipe 20 or 20' and the sleeve 32 or 42 or 52 or 62 being enclosed between the base plate 14 and a thin layer (i.e., broadly readable on the "film" as recited in the claims) of a deformable material (i.e., a reactive plastic foam insulating material; see column 6, lines 15-20).

The reference thus reads on the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 23, 33, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nam et al.

As discussed in greater detail above, Nam et al. discloses a heat exchanger for a refrigeration device essentially as claimed, including a bracket formed by a sleeve 32 or 42 or 52 or 62 and at least two braces or clamping sections 34a and 34b or 44a and 44b or 64a and 64b connected to the sensor housing 32 or 42 or 52 or 62, the latter being readable on the sleeve for receiving a temperature sensor of the instant application as claimed, and an aperture in which sensor 26 is disposed being formed by the base plate 14 and the sleeve 32 or 42 or 52 or 62 in the bracket between the at least two braces or clamping sections 34a or 34b or 44a and 44b or 64a or 64b. Nam, however, does not disclose the at least two braces or clamping sections 34a and 34b or 44a and 44b or 64a and 64b as extending out from the same side of the sleeve 32 or 42 or 52 or 62 in the same direction. Nevertheless, absent a showing of criticality or unexpected results, it would have been obvious to one skilled in the art at the time of invention to modify the heat exchanger of Nam et al. by mere rearranging of parts so as to have the at least two braces or clamping sections extending out from the same side and extending in the same direction in order to, for example, reduce the amount of space being taken up thereby while still maintaining sufficient fixing force to clamp the temperature sensor sleeve securely onto the tubular cooling pipe.

(10) Response to Arguments

Applicant argues that the Nam et al. reference lacks a sleeve as recited in independent claims 16 and 30. Applicant states "These claims recite that the sleeve is arranged on the base plate for receiving a temperature sensor and that the sleeve is fixed on a surface of the base plate by at least one brace....in the Nam reference, there is no sleeve which is fixed on a surface of a base plate. Instead, Nam discloses that a three-sided rectangular shaped sensor housing portion of the fixing bracket surrounds only three sides of a temperature sensor. The Nam device relies upon the inner liner of the refrigerator to hold the fourth side of the temperature sensor. Thus, Nam fails to disclose a sleeve for receiving a temperature sensor as required by claims 16 and 30."

The examiner respectfully disagrees with the applicant's arguments that Nam et al. fails to disclose a sleeve which is fixed on a surface of a base plate for receiving a temperature sensor because the temperature sensor housing 32 o4 42 or 52 or 62 as disclosed by Nam generally only has three sides, thus relying upon the inner liner of the refrigerator to hold the temperature sensor. In response to applicant's argument that the Nam et al. references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the sleeve necessarily has to have more than three sides and/or that the sleeve has to completely surround the temperature sensor on all four sides) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, it is noted that applicant's disclosure refers to the generally semi-cylindrical element 7 as shown in Figures 4 through 6 (which element 7 surrounds any temperature sensor placed therein on only three sides, the same as the sensor housing 32 or 42 or 52 or 62 of Nam et al.) as "sleeve 7" [see page 7 of the applicant's specification, lines 8 and on]. Thus, the sleeve 7 of the instant application as shown in Figures 4 through 6 and the sensor housing 32 or 42 or 52 or 62 of Nam et al. have the same general configuration and the same general function, with the latter thus being readily readable on the sleeve as recited in the claims of the instant application.

Applicant also argues that the Nam et al. reference fails to disclose two braces which extend out from the same side of the sleeve in the same direction, as recited in claims 23 and 33 of the instant application, and that furthermore, Nam et al. fails to "even hint that such a modification would be possible or desirable", thus rendering the examiner's assertion that it would have obvious to modify the device of Nam et al. as "the impermissible use of hindsight".

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Nam et al. reference does disclose at least two braces or clamping sections 34a and 34b or 44a and 44b or 64a and 64b connected to the sensor housing 32 or 42 or 52 or 62, which is readable on the sleeve for receiving a temperature sensor of the instant application as claimed. Mere rearrangement of parts (i.e., of the two braces or clamping sections so that the these extend out from the same side of the sleeve in the same direction and not from the sleeve in opposite directions as disclosed by Nam et al.), absent a showing of criticality or unexpected results, was well within the level of ordinary skill in the art at the time the claimed invention was made.

With regard to claims 28 and 35, applicant argues that while Nam's sensor fixing bracket 30 is surrounded by expandable insulating foam 12 located between the outer wall 10 and the inner liner 14 of Nam's enclosure, the "expandable foam material 14 [sic] is injected into the space between the inner wall 10 and the inner liner 14 during manufacture of the Nam device" but that this expandable foam is clearly

not a "film" as recited in claims 28 and 35 and that instead "the expandable foam 12 is a thick, rigid insulating material."

The examiner respectfully notes that applicant's statement that the expandable foam material is injected into the space between the inner wall 10 and the inner liner 14 during manufacture contradicts applicant's statement that "this expandable foam 12 is a thick, rigid insulating material" because not only are foams by definition at least somewhat deformable, but also "a thick, rigid...material" as described by applicant could not possibly be injected into the aforementioned space during manufacture. Furthermore, expandable foam materials used in insulation are inherently formed from a plastic material or a mixture thereof. With regard to applicant's assertion that the foam 12 does not constitute a "film" per se, the examiner hereby respectfully notes that not only are pending claims to be given their broadest reasonable interpretation, but absent a specific definition provided by applicant's disclosure, any relatively thin layer of a somewhat deformable material is readable on a film.

With regard to claim 29, applicant argues that, in addition to Nam's bracket not being a film (as already discussed and traversed by the examiner above), the film of deformable material recited by claim 29 of the instant application as being formed from at least one of bitumen, a plastic material, aluminum, or a mixture thereof, "one of skill in the art, following the teachings of Nam, would never have made the insulating foam material of Nam from one of these materials, nor would that person of ordinary skill in the art substituted one of these materials for the foam insulating material disclosed in Nam".

The examiner respectfully disagrees, noting instead that (as already discussed with regard to the arguments relating to claims 28 and 35 above) the expandable foam 12 of Nam et al. is inherently formed of at least a plastic/deformable/resinous material or a mixture thereof.

Applicant's arguments with regard to claim 36 are moot, in that claim 36 is objected to and has not been rejected by the examiner.

With regard to claims 37 and 38, which depend from claim 23 and claim 333, respectively, applicant argues that a bracket having an aperture as recited in claims 37 and 38 "is preferred because a film of deformable material which is laid over top of the bracket can be better attached to an underlying base plate by adhesion achieved through the aperture in the brace". In response to applicant's argument that the Nam et al. references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the above cited rationale for an aperture in the brace) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, applicant argues that the examiner has not been able to come up with any rationale as to why one skilled in the art would have modified the Nam structure to arrive at the structure as recited in claims 37 and 38. However, no such rationale is necessary because the additional structure (i.e., the aperture) as recited in claims 37 and 38 is disclosed by Nam et al. In particular, Nam et al. shows an aperture in which sensor 26 is disposed being formed by the base plate 14 and the sleeve 32 or 42 or 52 or 62 in the bracket between the at least two braces or clamping sections 34a or 34b or 44a and 44b or 64a or 64b as shown in the corresponding Figures.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ljiljana (Lil) V. Ciric/

Primary Examiner, Art Unit 3785

Conferees:

*/J J Swann/

Supervisory Patent Examiner, Art Unit 3785**

/Kenneth B Rinehart/

Supervisory Patent Examiner, Art Unit 3743